CONFIDENTIAL

1952 **File No.** R133 I (A)

PHE Rel Lab. **DEPARTMENT** 742 ✓ Revd (T) dt 22/2/52

B. **BRANCH**

Subject: The Bombay Refugee Act, 1948
Externment orders against.

F.R.S. Deptt. 156
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Copies out from original file.

File No. R 133 I (A) - B

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Std. Secrt. Slip 24-A

Copy of the Press cutting from the Times of India dated the 10th September 1951.

OUR BOMBAY RULE ULTRA VIRES?

High Court Ruling.

Section 7 of the Bombay Refugees Act, which empowered the Govt. to order a refugee to leave any area other than a refugee colony, is to that extent ultra vires of the Constitution of India. This ruling was given by a Division Bench of the Bombay High Court, consisting of Mr. Justice Bavdekar and Mr. Justice Chainani, while disposing of petitions filed by four displaced persons residing in the Dhanwal refugee colony.

The four men had been ordered by the Collector of East Khandesh to leave Dhanwal and go to reside in the refugee colonies of Chalisgaon, Pachora or Amalner.

The petitioners stated that they had not been heard before the order was made and further the order was bad in law as it contravened the fundamental right of free movement in the Union territory guaranteed by the Constitution.

Their Lordships observed that where an externment order was passed the person externed should be heard before the order was enforced. They further stated that the Government did have the power to control residence in the refugee colonies but to reside in them other was optional with the refugees. They, therefore, upheld the order of the Collector in so far as it applied to the Dhanwal refugee colony, but quashed its application any further.

Mr. Mohanlal Seksaria appeared for the petitioners and Mr. M.P.Chainani, Government pleader for the State.

bms.16/

Office of the [illegible].

Validity of section 7 of Bombay Refugees Act 1948.

In its judgment in Criminal Application No.779 of 1951 (with criminal applications nos. 780,781 and 782 of 1951), the High Court, following its own decision in Emperor v. Jeshingbhai, 53 Bom.L.R.544, has held that section 7 of the Bombay Refugees Act, 1948, is invalid in so far as it permits an order to be passed against a refugee **[illegible]** for calling upon him to leave any area or place other than the refugee colony constituted by Government on the ground that the section does not provide for communication of reasons of the order to the refugee and an opportunity to be heard. The High Court has not questioned the validity of the section so far as power to extern from the camps constituted by Govt. is concerned and this decision is in conformity with the previous decision of the High Court in Criminal Application No.741 of 1950. It is clear therefore that this power of externing from the camps can be validly exercised by Govt. and the Collectors and it will not be necy. to supply reasons to the refugee or to provide him an opportunity to be heard before such an order is passed. As regards the other power viz. of externing from other places, the power cannot be exercised so long as the decision of the Bombay High Court that the section is invalid stands. The High Court's reasoning in Emp. vs. Jeshingbhai has not been accepted as correct by Government and three cases are at present pending in the Supreme Court where that reasoning is being challenged. If the Supreme Court gives a decision in favour of Government the position will have to be reviewed.

-Sd/-
Remembrancer of Legal Affairs.

U.O. to Reh. Deptt. No.929-Confl, dt. th 6th Nov. 1951.

Ben.10/6

SECRET

Externment of displaced persons from displaced persons' townships and colonies.

GOVERNMENT OF BOMBAY.
Rehabilitation Department.
Circular Memorandum No.R.133/1-B.
Secretariat(Annexe), Fort,
Bombay, 4th August 1950.

The High Court in its judgment in criminal application No. 270 of 1950 has held that section 7 of the Bombay Refugees Act 1948 is invalid in so far as it permits an order to be passed against a displaced persons calling upon him to leave an area or place other than the displaced persons' townships and colonies constituted by Government. In view of this, it is not permissible to issue an order under section 7 of the Bombay Refugees Act, 1948 in respect of displaced persons who are not residents of a Government township or colonies.

2. The High Court has not questioned the validity of the section 7 so far as power to extern a displaced person from the townships and colonies constituted by Government is concerned. Thus the power of externing a displaced person from the townships and colonies constituted by Government can be validly exercised by Government and the Collectors and it will not be necessary to serve notice to the displaced persons or to provide him an opportunity to be heard before such an order is passed.

3. While issuing orders under section 7, it is sometimes omitted in the orders by the authorities concerned directing the displaced person concerned to go and reside in some other place specified in the order. In this connection, the High Court has held that it is open for the displaced persons whether they should go and reside in any other place or colony where they might be asked to go and reside. If the displaced persons do not comply with that part of the order no penal action can be taken against them.

4. All the Collectors and the Administrator, Ulhasnagar, are requested to bear the above instructions in mind carefully. They are further informed that as soon as any action is to be taken against a displaced person under section 7 of the Bombay Refugees Act, 1948, a copy of the order should invariably be sent to Government with a self contained report giving the detailed reasons for passing such an order. This will help Government to pass early orders on the Appeals of the persons concerned which are invariably made to Government.

By order of the Governor of Bombay,

Sd/-(J.C.FERNANDES).
For Secretary to the Government of Bombay
Rehabilitation Department.

To

All Collectors,

The Administrator, Ulhasnagar Township.

MSS.22/6